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SERVICE DATE - JANUARY 6, 2005

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34628]

Peter A. Gilbertson, et al. and Anacostia Rail Holdings Company—Continuance in Control  
Exemption—Northern Lines Railway, LLC

Peter A. Gilbertson and Bruce A. Lieberman (Gilbertson, et al.), noncarrier individuals, and Anacostia Rail Holdings Company (ARH), a noncarrier holding company (together, Petitioners), have filed a verified notice of exemption for Gilbertson et al. to continue in control of and for ARH to control Northern Lines Railway, LLC (NLR), upon NLR's becoming a Class III rail carrier.<sup>1</sup>

The transaction was expected to be consummated on or after December 14, 2004.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34627, Northern Lines Railway, LLC—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company. In that proceeding, NLR seeks to lease from The Burlington Northern and Santa Fe Railway Company and operate approximately 22.4 miles of rail line in St. Cloud, St. Joseph, and Cold Spring, MN.

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<sup>1</sup> Upon consummation of the lease in the related proceeding, ARH will not control NLR. However, because ARH may, at some point in the future have control over NLR, ARH is now seeking authority for such control.

Gilbertson, et al. and/or ARH currently control the following Class III rail carriers: (a) Chicago SouthShore & South Bend Railroad (CSS), which owns and/or operates property in Illinois and Indiana; (b) Illinois Indiana Development Company, LLC (IIDC),<sup>2</sup> which owns (but does not currently operate) property in Illinois and Indiana; (c) Pacific Harbor Line, Inc. (PHL), which operates property in California; (d) Louisville & Indiana Railroad Company (L&I), which owns and/or operates property in Indiana and Kentucky; and (e) New York & Atlantic Railway Company (NYA), which operates property in New York.<sup>3</sup>

Petitioners state that: (1) the railroads do not connect with each other or any railroad in their corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under

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<sup>2</sup> SouthShore Corporation (SouthShore) has 60% ownership of CSS and IIDC, and Gilbertson, et al. constitute two of the three directors of SouthShore.

<sup>3</sup> Gilbertson, et al. own and control ARH, which in turn owns and controls PHL, L&I and NYA.

sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34628, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Rose-Michele Weinryb, Esq., Weiner Brodsky Sidman Kider PC, 1300 19th St., N.W., Fifth Floor, Washington, DC 20036-1609.

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Decided: December 27, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary